

# SENATE BILL No. 357

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-3-27; IC 35-38-6.5.

**Synopsis:** Expungement of criminal offenses. Allows a sentencing court to prohibit the disclosure to a noncriminal justice agency or individual of a person's criminal history if the person was convicted of a misdemeanor or a Class D felony that could have been reduced to a misdemeanor and if the person meets certain conditions, including not having committed additional crimes and having demonstrated the ability to reintegrate into the community. Permits a court to expunge the records of a person's conviction if the person has been pardoned or if the person's conviction was vacated or set aside. Makes conforming amendments.

**Effective:** July 1, 2008.

## Breaux

January 14, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 357

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 10-13-3-27, AS AMENDED BY P.L.216-2007,  
2       SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2008]: Sec. 27. (a) Except as provided in subsection (b) **or (c)**,  
4       on request, a law enforcement agency shall release a limited criminal  
5       history to or allow inspection of a limited criminal history by  
6       noncriminal justice organizations or individuals only if the subject of  
7       the request:
- 8           (1) has applied for employment with a noncriminal justice
  - 9           organization or individual;
  - 10          (2) has applied for a license and has provided criminal history
  - 11          data as required by law to be provided in connection with the
  - 12          license;
  - 13          (3) is a candidate for public office or a public official;
  - 14          (4) is in the process of being apprehended by a law enforcement
  - 15          agency;
  - 16          (5) is placed under arrest for the alleged commission of a crime;
  - 17          (6) has charged that the subject's rights have been abused



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repeatedly by criminal justice agencies;

(7) is the subject of a judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

(9) is currently residing in a location designated by the department of child services (established by IC 31-25-1-1) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;

(10) has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;

(11) is being investigated for welfare fraud by an investigator of the division of family resources or a county office of family and children;

(12) is being sought by the parent locator service of the child support bureau of the department of child services;

(13) is or was required to register as a sex or violent offender under IC 11-8-8; or

(14) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the

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following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
  - (A) Employment with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) **A law enforcement agency may not release limited criminal history information to a noncriminal justice organization or individual if a court has ordered disclosure of the records restricted under IC 35-38-6.5-2 or IC 35-38-6.5-3.**

(d) Any person who knowingly or intentionally uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 35-38-6.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 6.5. Restricted Access to Conviction Records**

**Sec. 1. This chapter applies to all records created as a result of a conviction:**

- (1) for a misdemeanor;
- (2) for a Class D felony that, at the time of the conviction, met the alternative misdemeanor sentencing requirements specified in IC 35-50-2-7(b); or
- (3) that has been vacated or set aside, or for which the person receives a pardon under IC 11-9-2.

**Sec. 2. This section applies to a person who has been convicted of a misdemeanor. At least five (5) years after a person completes the person's sentence for the misdemeanor and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition the sentencing court to restrict access to the person's records by ordering the state police department not to disclose limited criminal history information to a noncriminal justice organization or individual under IC 10-13-3-27.**

**Sec. 3. This section applies to a person who has been convicted of a Class D felony that, at the time of the conviction, met the alternative misdemeanor sentencing requirements specified in IC 35-50-2-7(b). At least ten (10) years after a person completes the person's sentence for the felony and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition the sentencing court to restrict access to the person's**

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records by ordering the state police department not to disclose limited criminal history information to a noncriminal justice organization or individual under IC 10-13-3-27.

Sec. 4. (a) This subsection applies to a person whose conviction has been vacated or set aside. A person whose conviction has been vacated or set aside may petition the sentencing court to expunge the person's record at least one (1) year after the person's conviction was vacated or set aside, unless the person is being reprosecuted on charges related to the original conviction.

(b) This subsection applies to a person who receives a pardon under IC 11-9-2. A person who has received a pardon for a conviction under IC 11-9-2 may immediately petition the court to expunge the person's records.

(c) If a court grants a petition to expunge records under this section, the court shall order the records concerning the person's involvement in criminal court proceedings expunged in accordance with section 6 of this chapter.

Sec. 5. (a) This section applies to a petition to restrict disclosure filed under section 2 or 3 of this chapter. Except as provided in subsection (b), the court may grant a petition under this section. In considering whether to grant a petition under this section, the court may consider the following:

- (1) Whether the person has been rehabilitated to the court's satisfaction.
- (2) Any other factors indicating that the person has successfully reintegrated into society, including the following:
  - (A) Job performance.
  - (B) Job retention.
  - (C) Community service.
  - (D) Fulfillment of family and child support obligations.
  - (E) Completion of restitution to the victim.

(b) A court may not grant a petition filed under section 2 or 3 of this chapter by a person convicted of a misdemeanor or a Class D felony if the person has been convicted of a new crime since the date of the person's conviction of the misdemeanor or Class D felony.

(c) If the court grants relief under this section, the court shall order the state police department not to disclose limited criminal history information to a noncriminal justice organization or individual under IC 10-13-3-27.

Sec. 6. (a) This section applies to a petition for expungement filed under section 4 of this chapter by a person whose conviction

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has been set aside or who has received a pardon for a conviction.

The court:

(1) shall grant the petition if the person has not been convicted of a new crime; but

(2) may not grant the petition if the person has been convicted of a new crime;

since the date of the person's conviction that has been set aside or for which the person has received a pardon.

(b) If the court grants a petition for expungement filed under section 4, the court shall do the following:

(1) Order:

(A) the department of correction; and

(B) each:

(i) law enforcement agency; and

(ii) other person;

who incarcerated, provided treatment for, or provided other services to the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order.

(2) Order any:

(A) state;

(B) regional; or

(C) local;

central repository for criminal history information to send the person's records to the court.

(3) Seal any court records related to the allegation on which the conviction referred to in section 4 of this chapter was based and any proceeding related to the allegation.

(4) Notify the clerk of the supreme court to seal any records in the clerk's possession concerning the conviction referred to in section 4 of this chapter.

Sec. 7. The following apply if a petition for expungement filed under section 4 of this chapter is granted:

(1) Information concerning the person's arrest or conviction may not be placed or retained in any state central repository for criminal history information.

(2) The records of:

(A) the sentencing court;

(B) a juvenile court;

(C) a court of appeals; and

(D) the supreme court;

concerning the person shall be permanently sealed. Other

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1 records concerning the person may be given to the person or  
2 destroyed.

3 **Sec. 8. (a) If a person whose records are expunged under section**  
4 **6 of this chapter brings a civil action that might be defended with**  
5 **the contents of the records, the defendant is presumed to have a**  
6 **complete defense to the action.**

7 **(b) For the plaintiff to recover in an action described in**  
8 **subsection (a), the plaintiff must show that the contents of the**  
9 **expunged records would not exonerate the defendant.**

10 **(c) In an action described in subsection (a), the plaintiff may be**  
11 **required to state under oath whether:**

12 **(1) the plaintiff had records in the criminal justice system;**  
13 **and**

14 **(2) those records were expunged.**

15 **(d) In an action described in subsection (a), if the plaintiff denies**  
16 **the existence of the records, the defendant may prove the existence**  
17 **of the records in any manner compatible with the law of evidence.**

18 **Sec. 9. If the court grants a person's petition for expungement**  
19 **under section 6 of this chapter, the person shall be treated for all**  
20 **purposes as if the person had not been arrested for or convicted of**  
21 **the offense recorded in the expunged records.**

22 **SECTION 3. [EFFECTIVE JULY 1, 2008] IC 35-38-6.5, as added**  
23 **by this act, applies to all felonies and misdemeanors regardless of**  
24 **when the offense was committed.**

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